



David B. Cohen
Mayor

CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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ZAP Action Date: April 26, 2004

Board of Aldermen Action Date: May 3, 2004

90-Day Expiration Date: May 23, 2004

TO: Mayor David B. Cohen
Board of Aldermen
Planning and Development Board

FROM: Michael Kruse, Director of Planning and Development
Juris Alksnitis, Chief Zoning Code Official

SUBJECT: Petition # 216-00(3) of ALD. BRIAN YATES requesting that Chapter 30 of the City of Newton Zoning Ordinances be amended to require a special permit to demolish an existing single-family dwelling on a lot larger than 7,000 sq. ft. and smaller than 10,000 sq. ft. to replace it with a two-family dwelling.

RECOMMENDATION: Deny; consider refining/updating dimensional and density controls.

The purpose of this memorandum is to provide the Mayor, Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Boards. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider its discussion at a subsequent Working Session.

I. BACKGROUND

During recent years, a number of petitions were filed with the Zoning and Planning Committee (ZAP) of the Board of Aldermen with the intent of updating Section 30-15, "Density/dimensional requirements." Due to the complexity of the various suggested changes, a special study committee (the 30-15 Task Force) was established by ZAP. Task Force recommendations modifying Section 30-15(c) were enacted by the Board in 2001. In addition, technical modifications making the minimum lot area per dwelling unit a uniform 3,500 sq.ft. for single- and two-family dwellings in Multi Residence 1 and 2 districts for lots created prior to 12/7/53 was adopted in 2002.

The current petition seeks to add a new provision whereby a subgroup of lots, based on lot area between 7,000 sq. ft. – 10,000 sq. ft. would be made subject to the special permit process whenever an existing single family house is demolished and a two-family house is proposed in its place. While the language of the petition does not include a reference to a zoning district, the proposed change would affect primarily pre-1953 lots in MR1-MR3 zones where two-family dwellings are allowed as of right.

II. EXISTING ORDINANCE AND PROPOSED AMENDMENTS

The changes proposed by this petition would primarily affect Section 30-9, *Use Regulations for Multi-Residence Districts* and Section 30-15, Table 1, Density & Dimensional Controls in Residence Districts and for Residential Uses (Table 1). At this time, no language modifications to Section 30 have been proposed.

The petition seeks to insert a special permit provision, triggered by the proposed demolition of a single-family house and construction of a replacement two-family dwelling on lots between 7,000 sq. ft. – 10,000 sq. ft.

Zoning District	Current Min. Lot Area	Current Lot Area/unit	Curr. FAR	<u>Prop.</u> Spec. Perm. for demolishing 1F & building 2F
MULTI-RES. 1 – 1F & 2F				
Lots created 12/753 and later	10,000	5,000	.4	None
Lots created before 12/7/53	7,000	3,500	.4	7,001-9,999
MULTI-RES. 2 – 1F & 2F				
Lots created 12/753 and later	10,000	5,000	.4	None
Lots created before 12/7/53	7,000	3,500	.4	7,001-9,999
MULTI-RES. 3 – 1F & 2F				
Lots created 12/753 and later	10,000	5,000	.4	None
Lots created before 12/7/53	7,000	3,500	.4	7,001-9,999

III. ANALYSIS

Approximately seven years ago, rising concern regarding “monster homes” and oversize additions led to adoption of Floor Area Ratio (FAR) regulations in 1997 as a mechanism to further regulate “as of right” development. Section 30-15, Table 1 Density and Dimensional Controls in Residence Districts and for Residential Uses, Footnote 7(2) specifically provides that FAR applies to “total demolition of a single family residential structure or dwelling when the owner seeks to replace it with a two-family structure or dwelling”. Together with existing Table 1 controls, FAR was intended to help moderate

such development. It is also noted that at the same time, the Board adopted the relatively more generous FAR limit of 0.4 for Multi Residence zones, where demolition of single family dwellings in favor of new large two-family structures is most likely to occur.

The Newton Zoning Ordinance is structured in two general tiers governing residential development – “as of right” allowed residential uses meeting Table 1 density and dimensional controls, and uses requiring grant of special permit due to the need for various zoning relief. Typically single family homes are allowed “as of right” in Single Residence zones and single- and two-family homes are allowed “as of right” in Multi Residence zones provided Table 1 requirements are satisfied. Zoning relief neither applies to nor is necessary for compliant single and two-family homes. The proposed petition seeks to impose the special permit process (including site plan review), upon a subset of residential lots having 7,001 – 9,999 sq. ft. which are already governed by Table 1. In effect, the proposed change applies primarily to pre-1953 lots, which have lot areas under 10,000 sq. ft. This would cause otherwise allowed and compliant single and two-family development to be made subject to the grant of special permit whenever a single family dwelling is demolished and a two-family home is proposed in its place. As noted previously, while the language of the petition does not include a reference to a zoning district, the proposed change would affect primarily lots in MR1-MR3 zones where two-family dwellings are allowed as of right.

Review of the subject petition with the Law Department suggests that, as proposed, the ordinance change may cause disparate treatment of a subset of lots already subject to a uniform set of standards. Moreover, existing two-family homes constructed in place of single family dwellings would be rendered a legal nonconforming use. This will result in a situation wherein an allowed “as of right” two-family dwelling which was originally a two-family remains a conforming use, while the same use - a two-family dwelling replacement of a single family dwelling will be rendered non-conforming, all within the same Multi Residence zone. The Planning Department defers to the Law Department regarding any legal aspects that may arise due to these issues.

In addition, it is noted that a one-year demolition delay under the City’s Demolition Delay Ordinance applies to properties over 50 yr. old which are deemed historically significant and preferably preserved by the Newton Historical Commission. When a demolition delay period is initiated, the Commission seeks to work with the property owners wanting to demolish a dwelling in order to achieve a reasonable development plan which respects the historic character of a structure or neighborhood. However, once the demolition period expires, or if waived by the Commission, an owner is free to pursue demolition.

Review of demolition cases handled by the Newton Historical Commission during FY03, ending June 30, 2003, indicates a total caseload of 123. Of the 48 requests for demolition of houses, 11 were located in Multi Residence zones, and only one of these had a lot area (8,800 sq. ft.) which falls within the range of the lot area restriction contemplated by the subject petition. This sample of demolition requests focuses largely on structures thought to be 50 years old or older, and does not reflect cases involving demolition of more modern dwellings. However, as older areas of the City tend to be associated with more

densely developed neighborhoods involving portions of the City more likely to be zoned Multi Residence, the above data may be one indicator of the potential frequency of houses on older lots with which might be targeted for demolition and redevelopment to two-family residences and which fall within the proposed range of lot area restriction contemplated by the subject petition.

The remaining 37 requests for demolition of houses were distributed throughout Single Residence zones, with the greatest number of requests (17) occurring within the SR2 zone. It is also noted that not all requests for demolition, even when possible, always result in actual demolition of structures initially brought before the Commission. As owners and plans change over time, various approaches are considered, including additions rather demolition and replacement construction.

Table 1 sets out the requirements which govern “as of right” residential development in Newton and provide the parameters for density, scale, building envelope, and open space, etc. which all work together in combination. In 1997 when FAR was adopted, the Board of Aldermen engaged in extensive discussions regarding an appropriate balance between development and regulation. As real estate market trends continue to reflect higher prices, pressures increase to maximize development within the building envelope available. The Newton Historical Commission demolition request data for FY03 suggest that these pressures are evident across the City and that demolition requests appear more frequently in Single Residence zones than in Multi Residence zones.

As noted previously, the Board of Aldermen adopted a specific FAR requirement articulated in Table 1, Footnote 7(2) for the scenario addressed by the subject petition, i.e. demolition of one-family dwellings and construction of replacement two-family homes. This approach relies on the operation of density, dimensional, and related parameters established in Table 1. The Planning Department believes that further refinement of these parameters as needed within the existing “as of right” system may help moderate unwelcome development trends. Addition of the special permit process as a procedure to supersede Table 1 parameters and require customized site plan review of already regulated lots will increase the special permit caseload and will make the overall permitting process for a two-family dwelling significantly more complex.

IV. RECOMMENDATION

We agree that trends maximizing development within the building envelope available under current residential zoning are a cause for concern, particularly when such development results in structures out of scale with the character of a neighborhood. The demolition of single family dwellings in conjunction with the construction of potentially very large two-family dwellings represents an important element of this concern. Other aspects include the construction of large additions, and large second units outside the footprint of the original dwelling. As the current available building envelope is defined for each zone by the multiple parameters contained in Table 1 operating together in combination, the Planning Department suggests that these controls be reviewed for

appropriate refinements which may serve to moderate the development of oversized structures inconsistent with neighborhood character.

We do not recommend the insertion of the special permit process (including site plan review), upon a subset of residential lots having 7,001 – 9,999 sq. ft. which are already governed by Table 1. It is anticipated that this will increase the special permit caseload and will make the overall permitting process for a two-family dwelling needlessly complex. In addition, the proposed ordinance change raises the issue of disparate treatment of a subset of lots already subject to a uniform set of standards. The proposed change would cause certain two-family dwellings, i.e. those which were already constructed in place of single-family homes, to become legal nonconforming uses, while similar two-family uses originally built as two-family dwellings would remain conforming, all within the same zoning classification. The Planning Department defers to the Law Department regarding any legal aspects that may arise due to these issues.